

93D CONGRESS
1ST SESSION

H. R. 11050

IN THE HOUSE OF REPRESENTATIVES

OCTOBER 23, 1973

Mr. FUQUA introduced the following bill; which was referred to the Committee
on Rules

A BILL

To provide that meetings of Government agencies and of congressional committees shall be open to the public, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 SECTION 1. SHORT TITLE.—This Act may be cited as
4 the “Government in the Sunshine Act”.

5 SEC. 2. DECLARATION OF POLICY.—It is hereby
6 declared to be the policy of the United States that the public
7 is entitled to the fullest practicable information regarding
8 the decisionmaking processes of the Federal Government.

1 SEC. 3. DEFINITIONS.—For purposes of this Act—

2 (1) “National security” means—

3 (A) the protection of the United States against
4 actual or potential attack or other hostile acts of a foreign
5 power;

6 (B) the obtaining of foreign intelligence information
7 deemed essential to the security of the United States;

8 (C) the protection of national security information
9 against foreign intelligence activities; or

10 (D) the protection, to the extent deemed necessary
11 by the President of the United States against the over-
12 throw of the Government by force; and

13 (2) “Person” includes an individual, partnership, cor-
14 poration, associated governmental authority, or public or
15 private organization.

16 TITLE I—CONGRESSIONAL PROCEDURES

17 SEC. 101. SENATE COMMITTEE HEARING PRO-
18 CEDURE.—(a) The Legislative Reorganization Act of 1946
19 is amended—

20 (1) by striking out the third sentence of section
21 133 (b) ;

22 (2) by striking out subsections (a), (b), and (f)
23 of section 133A;

24 (3) by adding after section 133B the following:

1 “OPEN SENATE COMMITTEE MEETINGS

2 “SEC. 133C. (a) Each meeting of each standing, select,
3 or special committee or subcommittee of the Senate, in-
4 cluding meetings to conduct hearings, shall be open to the
5 public: *Provided*, That a portion or portions of such meet-
6 ings may be closed to the public if the committee or sub-
7 committee, as the case may be, determines by vote of a
8 majority of the members of the committee present that the
9 matters to be discussed or the testimony to be taken at such
10 portion or portions—

11 “(1) will disclose matters necessary to be kept
12 secret in the interests of national security or the confiden-
13 tial conduct of the foreign relations of the United States;

14 “(2) will relate solely to matters of committee staff
15 personnel or internal staff management or procedure;

16 “(3) will tend to charge with crime or misconduct,
17 or to disgrace, injure the professional standing or other-
18 wise expose to public contempt or obloquy any indi-
19 vidual, or will represent a clearly unwarranted invasion
20 of the privacy of any individual: *Provided*, That this
21 subsection shall not apply to any government officer or
22 employee with respect to his official duties or employ-
23 ment: *And provided further*, That as applied to a wit-
24 ness at a meeting to conduct a hearing, this subsection

1 shall not apply unless the witness requests in writing
2 that the hearing be closed to the public;

3 “(4) will disclose the identity of any informer or
4 law enforcement agent or of any information relating
5 to the investigation or prosecution of a criminal offense
6 that is required to be kept secret in the interests of
7 effective law enforcement; or

8 “(5) will disclose information relating to the trade
9 secrets or financial or commercial information pertain-
10 ing specifically to a given person where—

11 “(A) the information has been obtained by the
12 Federal Government on a confidential basis other
13 than through an application by such person for
14 a specific government financial or other benefit;
15 and

16 “(B) Federal statute requires the information
17 to be kept confidential by Government officers and
18 employees; and

19 “(C) the information is required to be kept
20 secret in order to prevent undue injury to the com-
21 petitive position of such person.

22 A separate vote of the committee shall be taken with re-
23 spect to each committee or subcommittee meeting that is
24 closed to the public pursuant to this subsection, and the
25 committee shall make available within one day of such

1 meeting, a written explanation of its action. The vote of
2 each committee member participating in each such vote
3 shall be recorded and published and no proxies shall be
4 allowed.

5 “(b) Each standing, select, or special committee or sub-
6 committee of the Senate shall make public announcement of
7 the date, place, and subject matter of each meeting (whether
8 open or closed to the public) at least one week before such
9 meeting unless the committee or subcommittee determines by
10 a vote of the majority of its members that committee business
11 requires that such meeting be called at an earlier date, in
12 which case the committee shall make public announcement
13 of the date, place and subject matter of such meeting at the
14 earliest practicable opportunity.

15 “(c) A complete transcript, including a list of all per-
16 sons attending and their affiliation, shall be made of each
17 meeting of each standing, select, or special committee or sub-
18 committee (whether open or closed to the public). Except as
19 provided in subsection (d) of this section, a copy of each such
20 transcript shall be made available for public inspection within
21 seven days of each such meeting, and additional copies of any
22 transcript shall be furnished to any person at the actual cost
23 of duplication.

24 “(d) In the case of meetings closed to the public pur-
25 suant to subsection (a) of this section, the committee or sub-

1 committee may delete from the copies of transcripts that are
2 required to be made available or furnished to the public pur-
3 suant to subsection (c) of this section, those portions which
4 it determines by vote of the majority of the committee or
5 subcommittee consist of materials specified in paragraph
6 (1), (2), (3), (4), or (5) of subsection (a) of this sec-
7 tion. A separate vote of the committee or subcommittee shall
8 be taken with respect to each such transcript. The vote of
9 each committee or subcommittee member participating in
10 each such vote shall be recorded and published, and no
11 proxies shall be allowed. In place of each portion deleted
12 from copies of the transcript made available to the public,
13 the committee or subcommittee shall supply a written expla-
14 nation of why such portion was deleted, and a summary of the
15 substance of the deleted portion that does not itself disclose
16 information specified in paragraphs (1), (2), (3), (4),
17 (5) of subsection (a). The committee or subcommittee shall
18 maintain a complete copy of the transcript of each meeting
19 (including those portions deleted from copies made avail-
20 able to the public), for a period of at least one year after such
21 meeting.

22 “(e) A point of order may be raised in the Senate
23 against any committee vote to close a meeting to the public
24 pursuant to subsection (a) of this section, or against any
25 committee or subcommittee vote to delete from the publicly

1 available copy a portion of a meeting transcript pursuant
2 to subsection (d) of this section, by committee or subcom-
3 mittee members comprising one-fourth or more of the total
4 membership of the entire committee or subcommittee, as
5 the case may be. Any such point of order shall be raised
6 in the Senate within five legislative days after the vote
7 against which the point of order is raised, and such point
8 of order shall be a matter of highest personal privilege.
9 Each such point of order shall immediately be referred to
10 a Select Committee on Meetings consisting of the Presi-
11 dent pro tempore, the leader of the majority party, and
12 the leader of the minority party. The select committee
13 shall examine the complete verbatim transcript of the
14 meeting in question and shall rule whether the vote to close
15 the meeting was in accordance with subsection (a) of this
16 section, or whether the vote to delete a portion or portions
17 from publicly available copies of the meeting transcript
18 was in accordance with subsection (d) of this section, as the
19 case may be. The select committee should report to the
20 Senate within five calendar days (excluding days where
21 the Senate is not in session) a resolution containing its find-
22 ings. If the Senate adopts a resolution finding that the
23 committee vote in question was not in accordance with the
24 relevant subsection, it shall direct that there be made pub-
25 licly available the entire transcript of the meeting improv-

1 erly closed to the public or the portion or portions of any
2 meeting transcript improperly deleted from the publicly
3 available copy, as the case may be.

4 “(f) The Select Committee on Meetings shall not be
5 subject to the provisions of subsection (a), (b), (c), or (d)
6 of this section.”

7 (b) Subsection (a) of subsection 242 of the Legislative
8 Reorganization Act of 1970 is repealed.

9 (c) Title I of the table of contents of the Legislative Re-
10 organization Act of 1946 is amended by inserting immedi-
11 ately below item 133B the following:

“133C. Open senate committee meetings.”.

12 SEC. 102. Clause 27 (f) (2) of rule XI of the Rules of
13 the House of Representatives is amended to read as follows:

14 “(2) (A) Each meeting of each standing, select, or spe-
15 cial committee or subcommittee, including meetings to con-
16 duct hearings, shall be open to the public: *Provided*, That a
17 portion or portions of such meetings may be closed to the
18 public if the committee or subcommittee, as the case may be,
19 determines by vote of a majority of the members committee
20 or subcommittee present that the matters to be discussed or
21 the testimony to be taken at such portion or portions—

22 “(i) will probably disclose matters necessary to be
23 kept secret in the interests of national security or the con-

1 fidential conduct of the foreign relations of the United
2 States;

3 “(ii) will relate solely to matters of committee staff
4 personnel or internal staff management or procedure;

5 “(iii) will tend to charge with crime or misconduct,
6 or to disgrace, injure the professional standing or other-
7 wise expose to public contempt of obloquy any individ-
8 ual, or will represent a clearly unwarranted invasion of
9 the privacy of any individual: *Provided*, That this sub-
10 section shall not apply to any government or officer or
11 employee with respect to his official duties or employ-
12 ment: *And provided further*, That as applied to a wit-
13 ness at a meeting to conduct a hearing, this subsection
14 shall not apply unless the witness requests in writing
15 that the hearing be closed to the public;

16 “(iv) will probably disclose the identity of any in-
17 former or law enforcement agent or of any information
18 relating to the investigation or presecution of a criminal
19 offense that is required to be kept secret in the interests
20 of effective law enforcement; or

21 “(v) will disclose information relating to the trade
22 secrets of financial or commercial information pertain-
23 ing specifically to a given person where—

24 “(I) the information has been obtained by the

1 Federal Government on a confidential basis other
2 than through an application by such person for a
3 specific government financial or other benefit;

4 “(II) Federal statute requires the information
5 to be kept confidential by Government officers and
6 employees, and

7 “(III) the information is required to be kept
8 secret in order to prevent undue injury to the com-
9 petitive position of such persons.

10 A separate vote of the committee shall be taken with respect
11 to each committee or subcommittee meeting that is closed
12 to the public pursuant to this subsection, and the committee
13 shall make available within one day of such meeting, a
14 written explanation of its action. The vote of each commit-
15 tee member participating in each such vote shall be re-
16 corded and published and no proxies shall be allowed.

17 “(B) Each standing, select, or special committee or
18 subcommittee shall make public announcement of the date,
19 place, and subject matter of each meeting (whether open
20 or closed to the public) at least one week before such
21 meeting unless the committee or subcommittee determines
22 that committee business requires that such meeting be called
23 at an earlier date, in which case the committee shall make
24 public announcement of the date, place, and subject matter
25 of such meeting at the earliest practicable opportunity.

1 “(C) A complete transcript, including a list of all per-
2 sons attending and their affiliation, shall be made of each
3 meeting of each standing, select, or special committee or
4 subcommittee meeting (whether open or closed to the pub-
5 lic). Except as provided in paragraph (D), a copy of each
6 such transcript shall be made available for public inspection
7 within seven days of each such meeting, and additional copies
8 of any transcript shall be furnished to any person at the actual
9 cost of duplication.

10 “(D) In the case of meetings closed to the public pur-
11 suant to subparagraph (A), the committee or subcommittee
12 may delete from the copies of transcripts that are required
13 to be made available or furnished to the public pursuant to
14 subparagraph (C), portions which it determines by vote of
15 the majority of the committee or subcommittee consist
16 of material specified in clauses (i), (ii), (iii), (iv), or (v)
17 of subparagraph (A). A separate vote of the committee
18 or subcommittee shall be taken with respect to each tran-
19 script. The vote of each committee or subcommittee mem-
20 ber participating in each such vote shall be recorded and
21 published, and no proxies shall be allowed. In place of each
22 portion deleted from copies of the transcript made available
23 to the public, the committee shall supply a written ex-
24 planation of why such portion was deleted and a summary of
25 the substance of the deleted portion that does not itself dis-

1 close information specified in subsection (i), (ii), (iii),
2 (iv), or (v) of subsection (a). The committee or sub-
3 committee shall maintain a complete copy of the transcript of
4 each meeting (including those portions deleted from copies
5 made available to the public), for a period of at least one
6 year after such meetings.

7 “ (E) A point of order may be raised against any com-
8 mittee or subcommittee vote to close a meeting to the public
9 pursuant to subparagraph (A), or against any committee
10 or subcommittee vote to delete from the publicly available
11 copy a portion of a meeting transcript and pursuant to sub-
12 paragraph (D), by committee or subcommittee members
13 comprising one-fourth or more of the total membership of
14 the entire committee or subcommittee. Any such point of
15 order must be raised before the entire House within five
16 legislative days after the vote against which the point of
17 order is raised, and such point of order shall be a matter of
18 highest privilege. Each such point of order shall immediately
19 be referred to a Select Committee on Meetings consisting
20 of the Speaker of the House of Representatives, the major-
21 ity leader, and the minority leader. The select committee
22 shall report to the House within five calendar days (exclud-
23 ing days where the House is not in session) a resolution
24 containing its findings. If the House adopts a resolution
25 finding that the committee vote in question was not in accord-

1 ance with the relevant subsection, it shall direct that there
 2 be made publicly available the entire transcript of the meet-
 3 ing improperly closed to the public or the portion or por-
 4 tions of any meeting transcript improperly deleted from
 5 the publicly available copy.

6 “(F) The Select Committee on Meetings shall not be
 7 subject to the provisions of subparagraph (A), (B), (C),
 8 or (D).”

9 SEC. 103. CONFERENCE COMMITTEES.—The Legisla-
 10 tive Reorganization Act of 1946 is amended by inserting
 11 after section 133 (c), as added by section 101 (3) of this
 12 Act the following new section:

13 “OPEN CONFERENCE COMMITTEE MEETINGS

14 “SEC. 133D. (a) Each meeting of a committee of con-
 15 ference shall be open to the public: *Provided*, That a portion
 16 or portions of such meetings may be closed to the public if
 17 the committee determines by vote of a majority of the mem-
 18 bers of the committee present that the matters to be discussed
 19 or the testimony to be taken at such portion or portions—

20 “ (1) will disclose matters necessary to be kept secret
 21 in the interests of national security or the confidential
 22 conduct of the foreign relations of the United States;

23 “ (2) will relate solely to matters of committee staff
 24 personnel or internal staff management or procedure;

25 “ (3) will tend to charge with crime or misconduct,

1 or to disgrace, injure the professional standing or other-
2 wise expose to public contempt or obloquy any individ-
3 ual, or will represent a clearly unwarranted invasion of
4 the privacy of any individual: *Provided*, That this sub-
5 section shall not apply to any government or officer or
6 employee with respect to his official duties or employ-
7 ment: *And, provided further*, That as applied to a wit-
8 ness at a meeting to conduct a hearing, this subsection
9 shall not apply unless the witness requests in writing that
10 the hearing be closed to the public;

11 “(4) will disclose the identity of any informer or
12 law enforcement agent or of any information relating to
13 the investigation or prosecution of a criminal offense
14 that is required to be kept secret in the interests of
15 effective law enforcement; or

16 “(5) will disclose information relating to the trade
17 secrets or financial or commercial information pertain-
18 ing specifically to a given person where—

19 “(A) the information has been obtained by the
20 Federal Government on a confidential basis other
21 than through an application by such person for a
22 specific government financial or other benefit;

23 “(B) Federal statute requires the information
24 to be kept confidential by Government officers and
25 employees; and

1 “(C) the information is required to be kept
2 secret in order to prevent undue injury to the com-
3 petitive position of such persons.

4 A separate vote of the committee shall be taken with respect
5 to each meeting that is closed to the public pursuant to this
6 subsection, and the committee shall make available within
7 one day of such meeting, a written explanation of its action.
8 The vote of each committee member participating in each
9 such vote shall be recorded and published and no proxies
10 shall be allowed.

11 “(b) Each committee of conference shall make public
12 announcement of the date, place, and subject matter of such
13 meeting at the earliest practicable opportunity.

14 “(c) A complete transcript, including a list of all per-
15 sons attending and their affiliation, shall be made of each
16 meeting of each committee of conference (whether open or
17 closed to the public). Except as provided in subsection (d)
18 of this section, a copy of each such transcript shall be made
19 available for public inspection within seven days of each such
20 meeting, and additional copies of any transcript shall be
21 furnished to any person at the actual cost of duplication.

22 “(d) In the case of meetings closed to the public pur-
23 suant to subsection (a) of this section, the committee of
24 conference may delete from the copies of transcripts that are
25 required to be made available or furnished to the public pur-

1 suant to subsection (c) of this section, those portions which
2 it determines by vote of the majority of the committee con-
3 sist of materials specified in paragraph (1), (2), (3), (4),
4 or (5) of subsection (a) of this section. A separate vote
5 of the committee shall be taken with respect to each such
6 transcript. The vote of each committee member participating
7 in each such vote shall be recorded and published, and no
8 proxies shall be allowed. In place of each portion deleted from
9 copies of the transcript made available to the public, the com-
10 mittee shall supply a written explanation of why such por-
11 tion was deleted, and a summary of the substance of the
12 deleted portion that does not itself disclose information speci-
13 fied in paragraph (1), (2), (3), (4), or (5) of subsection
14 (a) of this section. The committee shall maintain a complete
15 copy of the transcript of each meeting (including those por-
16 tions deleted from copies made available to the public), for
17 a period of at least one year after such meeting.

18 “(e) A point of order may be raised against any com-
19 mittee vote of a committee of conference to close a meeting
20 to the public pursuant to subsection (a) of this section or
21 any committee vote to delete from the publicly available
22 copy a portion of a meeting transcript pursuant to subsec-
23 tion (d) of this section by committee members comprising
24 one-fourth or more of the total membership of the entire
25 committee. Any such point of order shall be raised in

1 either House within five legislative days after the vote
2 against which the point of order is raised, and such point
3 of order shall be a matter of highest personal privilege. Each
4 such point of order shall immediately be referred to a Select
5 Conference Committee on Meetings consisting of the Presi-
6 dent pro tempore of the Senate, the Speaker of the House
7 of Representatives, and the majority and minority leaders
8 from each House. The select committee shall examine the
9 complete verbatim transcript of the meeting in question
10 and shall rule whether the vote to close the meeting was
11 in accordance with subsection (a) of this section or whether
12 the vote to delete a portion or portions from publicly avail-
13 able copies of the meeting transcript was in accordance with
14 subsection (d) of this section, as the case may be. The
15 select committee reports to both Houses a concurrent re-
16 solution within five calendar days (excluding days where
17 either House is not in session) a resolution containing its
18 findings. If both Houses adopt such a resolution finding
19 that the committee vote in question was not in accordance
20 with the relevant subsection, they shall direct that there be
21 made publicly available the entire transcript of the meeting
22 improperly closed to the public or the portion or portions
23 of any meeting transcript improperly deleted from the pub-
24 licly available copy, as the case may be.

25 “(f) The Select Conference Committee on Meetings

1 shall not be subject to the provisions of subsection (a), (b),
2 (c), or (d) of this section.”

3 (b) Title I of the table of contents of the Legislative Re-
4 organization Act of 1946 is amended by inserting immedi-
5 ately below item 133C, as added by section 101 (c) of this
6 Act, the following:

“133D. Open conference committee meetings.”.

7 TITLE II—AGENCY PROCEDURES

8 SEC. 201. (a) This section applies, according to the
9 provisions thereof, to any agency, as defined in section
10 551 (1) of title 5, United States Code, where the body com-
11 prising the agency consists of two or more members. Except
12 as provided in subsection (b), all meetings (including meet-
13 ings to conduct hearings) of such agencies at which official
14 action is considered or discussed shall be open to the public.

15 (b) Subsection (a) shall not apply to any portion or
16 portions of an agency meeting where the agency determines
17 by vote of a majority of its entire membership—

18 (1) will probably disclose matters necessary to be
19 kept secret in the interests of national security or the
20 confidential conduct of the foreign relations of the United
21 States;

22 (2) will relate solely to individual agency personnel
23 or to internal agency office management and procedures
24 or financial auditing;

(3) will tend to charge with crime or misconduct, or to disgrace, injure the professional standing or otherwise expose to public contempt of obloquy any individual, or will represent a clearly unwarranted invasion of the privacy of any individual: *Provided*, That this subsection shall not apply to any government or officer or employee with respect to his official duties or employment: *And provided further*, That as applied to a witness at a meeting to conduct a hearing, this subsection shall not apply unless the witness requests in writing that the hearing be closed to the public;

(4) will probably disclose the identity of any informer or law enforcement agent or of any information relating to the investigation or prosecution of a criminal offense that is required to be kept secret in the interests of effective law enforcement;

(5) will disclose information relating to the trade secrets or financial or commercial information pertaining specifically to a given person where—

(A) the information has been obtained by the Federal Government on a confidential basis other than through an application by such person for a specific government financial or other benefit; and

(B) Federal statute requires the information to

1 be kept confidential by government officers and em-
2 ployees, and

3 (C) the information is required to be kept secret
4 in order to prevent undue injury to the competitive
5 position of such persons;

6 (6) will relate to the conduct or disposition (but
7 not the initiation of a case of adjudication governed by
8 the provisions of the first paragraph of section 554 (a)
9 of title 5, United States Code, or of subsection (1),
10 (2), (4), (5), or (6) thereof.

11 A separate vote of the agency members shall be taken with
12 respect to each agency meeting that is closed to the public
13 pursuant to this subsection. The vote of each agency mem-
14 ber participating in such vote shall be recorded and published
15 and no proxies shall be allowed. In the case of any closing of
16 portions of a meeting to the public pursuant to this subsection,
17 the agency shall promptly publish an explanation of its
18 action.

19 (c) Each agency shall make public announcement of
20 the date, place, and subject matter of each meeting at which
21 official action is considered or discussed (whether open or
22 closed to the public) at least one week before each meeting
23 unless the agency determines by a vote of the majority of
24 its members that agency business requires that such meetings
25 be called at an earlier date, in which case the agency shall

1 make public announcement of the date, place, and sub-
2 ject matter of such meeting at the earliest practicable
3 opportunity.

4 (d) A complete transcript, including a list of all per-
5 sons attending and their affiliations, shall be made of each
6 meeting of each agency at which official action is considered
7 or discussed (whether open or closed to the public). Ex-
8 cept as provided in subsection (e) of this section a copy of
9 each such meeting shall be made available to the public
10 for inspection, and additional copies of any transcript shall
11 be furnished to any person at the actual cost of duplication.

12 (e) In the case of meetings closed to the public pur-
13 suant to subsection (b) of this section, the agency may delete
14 from the copies of transcripts made available or furnished to
15 the public pursuant to subsection (d) of this section those
16 portions, which the agency determines by vote of a majority
17 of its membership consists of materials specified in paragraph
18 (1), (2), (3), (4), or (5) of subsection (b) of this
19 section. A separate vote of the agency shall be taken with
20 respect to each transcript. The vote of each agency mem-
21 ber participating in such vote shall be recorded and pub-
22 lished, and no proxies shall be allowed. In place of each
23 portion deleted from copies of the meeting transcript made
24 available to the public, the agency shall supply a written
25 explanation of why such portion was deleted and a summary

1 of the substance of the deleted portion that does not itself
2 disclose information specified in paragraph (1), (2), (3),
3 (4), or (5) of subsection (a). The agency shall maintain
4 a complete verbatim copy of the transcript of each meeting
5 (including those portions deleted from copies made available
6 to the public) for a period of at least two years after such
7 meeting.

8 (f) Each agency subject to the requirements of this
9 section shall, within one hundred and eighty days after the
10 enactment of this Act, following published notice in the
11 Federal Register of at least thirty days and opportunity
12 for written comment by interested persons, promulgate regu-
13 lations to implement the requirements of subsections (a)
14 through (e) inclusive of this section. Any citizen or person
15 resident in the United States may bring a proceeding in
16 the United States Court of Appeals for the District of Co-
17 lumbia Circuit—

18 (1) to require an agency to promulgate such regu-
19 lations if such agency has not promulgated such regu-
20 lations within the time period specified herein; or

21 (2) to set aside agency regulations issued pursu-
22 ant to this subsection that are not in accord with the
23 requirements of subsections (a) through (e) of this
24 section inclusive, and to require the promulgation of
25 regulations that are in accord with such subsections.

1 (g) The district courts of the United States shall have
2 jurisdiction to enforce the requirements of subsections (a)
3 through (e) inclusive of this section by declaratory judg-
4 ment, injunctive relief, or otherwise. Such actions may
5 be brought by any citizen or person resident in the United
6 States. Such actions shall be brought in the district wherein
7 the plaintiff resides, or has his principal place of business,
8 or where the agency in question has its headquarters. In
9 deciding such cases the court may examine any portion of
10 a meeting transcript that was deleted from the publicly
11 available copy. Among other forms of equitable relief, the
12 court may require that any portion of a meeting transcript
13 improperly deleted from the publicly available copy be made
14 publicly available for inspection and copying, and, having
15 due regard for orderly administration and the public interest,
16 may set aside any agency action taken or discussed at an
17 agency meeting improperly closed to the public.

18 (h) In any action brought pursuant to subsection (f)
19 or (g) of this section, costs of litigation (including reason-
20 able attorney's and expert witness fees) may be apportioned
21 to the original parties or their successors in interest when-
22 ever the court determines such award is appropriate.

23 (i) The agencies subject to the requirements of this
24 section shall annually report to Congress regarding their
25 compliance with such requirements, including a tabulation

1 of the total number of agency meetings open to the public,
2 the total number of meetings closed to the public, the reasons
3 for closing such meetings, and a description of any litigation
4 brought against the agency under this section.

5 SEC. 202. (a) Title 5 of the United States Code is
6 amended by adding after section 557 the following:

7 “EX PARTE COMMUNICATIONS IN AGENCY PROCEEDING

8 “SEC. 557. (a) This section applies, according to the
9 provisions thereof, to the following proceedings:

10 “(1) any proceeding to which section 557 (a) of
11 this title applies;

12 “(2) any rulemaking proceeding with respect to
13 which an agency is required by section 553 of this title
14 to afford public notice and opportunity for participation
15 by interested persons: *Provided*, That for purposes of
16 this section the exemption from such requirements in
17 section 553 (a) (2) of matters relating to public prop-
18 erty, loans, grants, benefits, or contracts shall not be
19 effective; or

20 “(3) any proceeding to prepare an environmental
21 impact statement required by section 102 (2) (c) of
22 the National Environmental Policy Act.

23 “(b) In any agency proceeding which is subject to
24 subsection (a) of this section, except to the extent required

1 for the disposition of ex parte matters as authorized by
2 law—

3 “(1) no interested person (including members or
4 employees of other government agencies) shall make or
5 cause to be made to any member of the agency in ques-
6 tion, hearing examiner, or employee who is or may be
7 involved in the decisional process of said proceeding, an
8 ex parte communication relevant to the events of the
9 proceeding;

10 “(2) no member of the agency in question, hearing
11 examiner, or employee who is or may be involved in the
12 decisional process of such proceeding, shall make or
13 cause to be made to an interested person an ex parte
14 communication relevant to the merits of the proceeding;

15 “(3) a member of the agency in question, hearing
16 examiner, or employee who is or may be involved in the
17 decisional process of said proceeding, who receives a
18 communication in violation of this subsection shall place
19 in the public record of the proceeding—

20 “(A) written material submitted in violation of
21 this subsection; or

22 “(B) memorandums stating the substance of
23 all oral communications submitted in violation of
24 this subsection; or

1 “(C) responses to the materials described in
2 subparagraphs (A) and (B) of this subsection;

3 “(4) upon receipt of a communication in violation
4 of this subsection from a party to any proceeding to
5 which this section applies, the hearing examiner or em-
6 ployee presiding at the hearings may, to the extent
7 consistent with the interests of justice and the policy
8 of the underlying statutes, require the persons or party to
9 show cause why his claim or interest in the proceeding
10 should not be discussed, denied, disregarded, or other-
11 wise adversely affected by virtue of such violation; and

12 “(5) the prohibitions of this subsection shall apply
13 at such time as the agency shall designate, having due
14 regard for the public interest in open decisionmaking
15 by agencies, but in no case shall they apply later than
16 the time at which a proceeding is noticed for hearing
17 or opportunity for participation by interested persons
18 unless the person is responsible for the communication
19 has knowledge that it will be noticed, in which case
20 said prohibition shall apply at the time of his acquisition
21 of such knowledge.

22 “(c) Each agency subject to the requirements of this
23 section shall, within one hundred and eighty days after the
24 enactment of this section, following published notice in
25 the Federal Register of at least thirty days and opportu-

1 nity for written comment by interested persons, promul-
2 gate regulations to implement the requirements of subsection
3 (b) of this section. Any citizen or person resident in the
4 United States may bring a proceeding in the United States
5 Court of Appeals for the District of Columbia Circuit—

6 “(1) to require any agency to promulgate such
7 regulations if such agency has not promulgated such
8 regulations within the time period specified herein;

9 “(2) to set aside agency regulations issued pursuant
10 to this subsection that are not in accord with the require-
11 ments of subsection (b) of this section; and to require
12 the promulgation of regulations that are in accord with
13 such subsection.

14 “(d) The district courts of the United States shall have
15 jurisdiction to enforce the requirements of subsection (b) of
16 this section by declaratory judgment, injunctive relief, or
17 otherwise. Such action may be brought by any citizen of or
18 person resident in the United States. Such actions shall be
19 brought in the district wherein the plaintiff resides or has his
20 principal place of business or where the agency in question
21 has its headquarters. Where a person other than an agency,
22 agency member, hearing examiner, or employee is alleged
23 to have participated in a violation of the requirements of sub-
24 section (b) of this section such person may, but need not
25 be joined with the agency as a party defendant; for purposes

1 of joining such person as a party defendant, service may be
2 had on such person in any district. Among other forms of
3 equitable relief, the court may require that any ex parte com-
4 munication made or received in violation of the requirements
5 of subsection (b) of this section be published, and, having
6 due regard for orderly administration and the public interest,
7 may set aside any agency action taken in a proceeding with
8 respect to which the violation occurred.

9 “(e) In any action brought pursuant to subsection (c)
10 or (d) of this subsection, cost of litigation (including
11 reasonable attorney’s and expert witness fees) may be ap-
12 portioned to the original parties or their successors in interest
13 whenever the court determines such award is appropriate.”

14 SEC. 203. This title and the amendments made by this
15 title do not authorize withholding of information or limit the
16 availability of records to the public except as provided in this
17 title. This title is not to be construed as authority to withhold
18 information from Congress.

93D CONGRESS
1ST SESSION

H. R. 11050

A BILL

To provide that meetings of Government agencies and of congressional committees shall be open to the public, and for other purposes.

By Mr. FUQUA

OCTOBER 23, 1973

Referred to the Committee on Rules